IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

OP.No. 32265 of 2002(N)

PETITIONER:

C.H.ABDUL WAHEED,
S/O.SRI.C.H.KUNHAMU: "SADDIQUE MANZIL",
KULAPPURAM NORTH P.O.A.R.NAGAR: VENGARA PANCHAYATH
MALAPPURAM DISTRICT.

BY ADV. SMT.SUMATHY DANDAPANI (SR.)
SRI.G.RAGHUNATH

RESPONDENTS:
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1. DEPUTY TAHSILDAR (ARREAR COLLECTION)
TALUK OFFICE, TIRURANGADI.

2. TAHSILDAR, TIRURANGADI.

3. DISTRICT COLLECTOR, MALAPPURAM.

4. GOVERNMENT OF KERALA: REPRESENTED
BY SECRETARY, TAXES DEPARTMENT,
THIRUVANANTHAPURAM.

***5. C.H. KUNHABU,**
6/35, RAJAGOPAL STREET,
NAGALAPURAM,
TINDIVANAM, VALIPURAM DIST.,
PIN- 604 002.

***ADDL. R5 IS IMPLEADED AS PER ORDER**
DATED 14/03/2007

BY SR. GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 54535/2002 IN OP NO. 32265/2002 N

DISMISSED

28/03/2007. **SD/- K.BALAKRISHNAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE NOTICE IN FORM I U/S 7 OF THE RR ACT DT. 2/11/2000.

EXT.P2. COPY OF THE NOTICE IN FORM 10 U/S. 33 OF THE RR ACT.

EXT.P3. COPY OF THE KATCHIT FOR GOODS RELEASED FOR SAGE KEEPING.

EXT.P4. COPY OF THE NOTICE IN FORM 2 PROPOSSING TO SELL GOODS COVERED BY EXT. P3.

EXT.P5. COPY OF THE NOTICE IN FORM II U/S. 36 OF THE RR ACT ATTACHING IMMOVABLE PROPERTIES.

EXT.P6. COPY OF THE OURDER DT. 18/09/2001 IN APPEAL NO. 44/2001 OF THE APPELLATE ASSISTANT COMMISSIONER (C.T) CUDDALORE.

EXT.P7. COPY OF THE NOTICE 4/1/2002 ISSUED BY THE DEPUTY COMMERCIAL TAX OFFICER, TINDIVANAM, ISSUED IN FAVOUR OF THE FATHER OF THE APPELLANT.

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE REQUISITION RECEIVED FROM THE DEPUTY COMMERCIAL TAX OFFICER, TINDIVANAM.

EXT.R1B. COPY OF THE GOVT. ORDER NO. RR/9003/2000/M(R0 DT. 27/11/00.

True copy

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K.BALAKRISHNAN NAIR, J.

O.P. NO.32265 OF 2002-N

JUDGMENT

The petitioner has approached this Court, challenging Exts.P1 and P2 revenue recovery notices issued by the 1st respondent Deputy Tahsildar (Arrear Collection), Tirurangadi. The requisition is made to collect sales tax arrears for the year 1993-94, allegedly due from him to the State of Tamil Nadu. The Deputy Commissioner, Commercial Taxes, Tindivanam had issued a revenue recovery certificate to the District Collector, Malappuram, based on which Exts.P1 and P2 have been issued by the 1st respondent. The petitioner submits, he was never doing the business and his father was doing it up to 1994. His father challenged the assessment order for the year 1993-94 before the appellate authority and the appellate authority set aside the said order as per Ext.P6 appellate order dated 18.9.2001. So, based on Ext.P6, it is submitted that there cannot be any further recovery of sales tax for the year 1993-94.

2. The learned Government Pleader produced the files. Relying on the contents of the file, he submitted that the petitioner was doing the business. He is a defaulter and the Deputy Commissioner, Commercial

Taxes, Tindivanam had sent a revenue recovery certificate to recover the amount due from him. Therefore, action has been taken as per Exts.P1 and P2, to recover the amount covered by the certificate.

3. The District Collector, Malappuram and the Deputy Tahsildar (Arrear Collection), Tirurangadi are bound by the revenue recovery certificate issued by the Deputy Commissioner, Commercial Taxes, Tindivanam, who is apparently exercising the powers of the Collector under the Revenue Recovery Act. They cannot act on Ext.P6 or refuse to collect the amounts due from the petitioner. It should be collected as per the certificate issued by the Deputy Commissioner, Commercial Taxes, Tindivanam. So, the attack made against Exts.P1 and P2, based on Ext.P6 cannot be accepted. The petitioner may move the Deputy Commissioner, Commercial Taxes, Tindivanam and get the requisition or revenue recovery certificate recalled, based on Ext.P6, provided his contentions are correct. Subject to the said right of the petitioner, the Original Petition is dismissed.

28th March, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/

K.BALAKRISHNAN NAIR,J.

O.P. NO.32265/2002-N

JUDGMENT

28.3.2007